

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

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George Rahsaan Brooks
#AP-4884
SCI-Coal Township
1 Kelley Drive
Coal Township, PA 17866-1021

March 13, 2017

Celia B. Liss
Open Records Officer
City of Pittsburgh Dept. of Open Records
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219

In re: Open Records Appeal; RTK 94-01-2017

Dear Mr. Brooks and Open Records Officer Liss:

I am the Open Records Appeals Officer for the District Attorney of Allegheny County. On March 8, 2017 I received from you an appeal of a denial of a Right to Know Request. That denial was from the City of Pittsburgh. Your request was as follows:

I am requesting a copy of the "Supplemental Report" [that] was prepared by detective James Conn either on September 30, 1975 or October 1, 1975 and a copy of the Report prepared by detective Phare Hutton, dated November 14, 1975, addressed to detective Lt. Ralph Pampena in my criminal case: Commonwealth v. Brooks, Nos.: 7509310 and 7508889. I recently became aware of these reports after a copy of the Suppression Hearing Transcript was sent to me by Brandon P. Ging, Deputy-Appeals Division of the Allegheny County Public Defenders' Office. This was my very first time having access to this transcript.

I am also requesting any and all notes/reports concerning the criminal investigation and my arrest on October 1, 1975 and November 11, 1975 involving

the above stated docket numbers whether referred to or not, in detective Phare Mutton's November 14, 1975 report, prepared by detectives Stephen Calfo, Robert Fetherole, Robert Spozarski, Lt. Ralph Pampana and Officers Ronald Bernot, Frank Rubinoski.

(See letter dated February 24, 2017).

The City of Pittsburgh, through Ms. Celia B. Liss, Open Records Officer denied your request in relevant part as follows:

Upon investigation, I have determined that the records you have requested are exempt from production under RTKL and your request is denied in its entirety. RTKL states that investigative reports are not subject to release. See 65 P.S. §§67.708(b)(16)(ii). Records that relate to an investigation are not public even after an investigation is closed. Further, to the extent that this request is protected under the Criminal History Record Information Act, 18 PA. C.S. §9101 *et seq.*, the City is prohibited from forwarding this information to you.

(See letter dated February 24, 2017).

As you know, 65 P.S. §67.708 (a)(16) exempts from disclosure:

(16) A record of an agency relating to or resulting in a criminal investigation, including:

* * * *

(ii) Investigative materials, notes, correspondence, videos and reports.

As the Office of Open Records explained in *Jones v. Pennsylvania Game Commission*, OOR Dkt. AP 2009-0196 records pertaining to a closed criminal investigation remain protected because Section 708(b)(16) expressly protects records relating to the result of an criminal investigation and thus remain protected even after the investigation ends. See also, *State Police v. Office of Open Records*, 5 A.3d 473 (Pa. Cmwlth. 2010); *Sherry v. Radnor Twp. School District*, 20 A.3d 515 (Pa. Cmwlth. 2011).

As a result, I must decline your request. Please be advised that pursuant to 65 P.S. §67.1302 you have 30 days to appeal my decision to the Court of Common Pleas of Allegheny County. Thank you.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer

cc: Ms. Celia B. Liss, Open Records Officer